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UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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RONALD COLLINS,

Plaintiff,

v.

JOSHUA COLLINS, et al.,

Defendants.

Case No. 3:16-cv-00111-MMD-WGC

ORDER

**I. BACKGROUND AND PROCEDURAL HISTORY**

On October 24, 2016, Plaintiff, who is a prisoner in the custody of the Nevada Department of Corrections (“NDOC”), filed an amended civil rights complaint pursuant to 42 U.S.C. § 1983, asserting four counts against multiple defendants (ECF No. 11-1, 11-2, 11-3).

On September 15, 2017, the Court issued a screening order on Plaintiff’s amended complaint (ECF No. 19). The Court allowed Plaintiff to proceed on the following: (1) Count I retaliation claim against Defendant Collins; (2) Count I excessive force claim against Defendant Collins; (3) Count II excessive force claim against Defendant Hightower; (4) Count III deliberate indifference claim related to growths against Defendants Gedney, Marr, and Aranas; (5) Count III deliberate indifference claim related to treatment of Plaintiff’s back against Defendants Gedney, Marr, and Aranas; and (6) Count IV due process claim against Defendants Rexwinkle, LeGrand, McDaniel, Keith, Baca, Deal, Walsh, Irvin, Foster, and Skulstad. (ECF No. 19 at 7.) The Court dismissed Defendants Baugh, Clark, and Smith, without prejudice, from this action. (*Id.*)

1 Presently before the Court is Plaintiff's motion for preliminary injunction and  
2 objection to this Court's screening order on Plaintiff's amended complaint (ECF Nos. 21,  
3 23). The Court discusses each in turn.

## 4 **II. MOTION FOR PRELIMINARY INJUNCTION**

5 On September 18, 2017, Plaintiff filed a motion for preliminary injunction.<sup>1</sup> (ECF  
6 No. 21.) In the motion, Plaintiff seeks injunctive relief ordering Defendant Aranas to not  
7 dispose of any of Plaintiff's medical records from 2014 to present, including MRI reports  
8 and x-rays, and to comply with Plaintiff's doctor's orders to have an MRI performed. (*Id.*  
9 at 4.) Plaintiff is afraid that his medical records will be disposed of as "out of date" by the  
10 medical department, which has happened in the past. (*Id.*) Further, Plaintiff alleges that  
11 the surgeon who performed Plaintiff's back surgeries requested an MRI on January 18,  
12 2017, but Defendants refuse to schedule the MRI, which has caused Plaintiff unnecessary  
13 pain. (*Id.*) Plaintiff attaches to his motion a medical kite dated July 1, 2017, in which he  
14 asks why he has not been schedule for the MRI. (*Id.* at 9.) Plaintiff is told, "You are on a  
15 list." (*Id.*) As of the date of the filing of his motion for preliminary injunction, Plaintiff had  
16 still not received the MRI requested by his back surgeon.

17 Injunctive relief, whether temporary or permanent, is an "extraordinary remedy,  
18 never awarded as of right." *Winter v. Natural Res. Defense Council*, 555 U.S. 7, 24 (2008).  
19 "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on  
20 the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief,  
21 that the balance of equities tips in his favor, and that an injunction is in the public interest."  
22 *Am. Trucking Ass'ns, Inc. v. City of Los Angeles*, 559 F.3d 1046, 1052 (9th Cir. 2009)  
23 (quoting *Winter*, 555 U.S. at 20). Furthermore, under the Prison Litigation Reform Act  
24 ("PLRA"), preliminary injunctive relief must be "narrowly drawn," must "extend no further  
25 than necessary to correct the harm," and must be "the least intrusive means necessary  
26 to correct the harm." 18 U.S.C. § 3626(a)(2).

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27 <sup>1</sup>The Court considers this motion to be timely filed and not in violation of the 90-  
28 day stay, as it appears to have crossed paths with this Court's screening order issued on  
Friday, September 15, 2017.

1           The Court finds that, based on the facts alleged in the present motion (ECF No.  
2 21), and in Plaintiff's amended complaint (ECF No. 20), Plaintiff states a colorable claim  
3 for Eighth Amendment deliberate indifference to serious medical needs. Furthermore, the  
4 Court finds that based on the nature of Plaintiff's allegations, Plaintiff could likely suffer  
5 irreparable harm by further delay in receiving a MRI. As such, the Court orders the  
6 Attorney General's Office to advise the Court within **seven (7)** days from the date of the  
7 entry of this order whether it will enter a limited notice of appearance on behalf of  
8 Defendants. Additionally, based on the nature of the allegations, Defendants will also  
9 have seven (7) days from the date of this order to file their response to Plaintiff's motion  
10 for preliminary injunction.

### 11       **III.     MOTION FOR RECONSIDERATION**

12           On September 20, 2017, Plaintiff filed an objection to the screening order on  
13 Plaintiff's amended complaint under Federal Rule of Civil Procedure 46. (ECF No. 23.)  
14 Rule 46's essential function is to require parties to raise timely objections to a ruling or  
15 order made during trial and other trial-like proceedings. Rule 46 is therefore inapplicable  
16 to Plaintiff's "objection" to this Court's screening order. Therefore, the Court construes  
17 Plaintiff's objection as a motion for reconsideration under the Court's "inherent procedural  
18 power to reconsider, rescind, or modify an interlocutory order for cause seen by it to be  
19 sufficient." *City of Los Angeles v. Santa Monica Baykeeper*, 254 F.3d 882, 885 (9th Cir.  
20 2001) (internal quotation marks and emphasis omitted). Although courts have authority  
21 to reconsider prior orders, they "should be loathe to do so in the absence of extraordinary  
22 circumstances such as where the initial decision was 'clearly erroneous and would work  
23 a manifest injustice.'" *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 817  
24 (1988) (quoting *Arizona v. California*, 460 U.S. 605, 618 n. 8 (1983)).

25           A motion to reconsider must set forth "some valid reason why the court should  
26 reconsider its prior decision" and set "forth facts or law of a strongly convincing nature to  
27 persuade the court to reverse its prior decision." *Frasure v. United States*, 256 F.Supp.2d  
28 1180, 1183 (D. Nev. 2003). Reconsideration is appropriate if this Court "(1) is presented

1 with newly discovered evidence, (2) committed clear error or the initial decision was  
2 manifestly unjust, or (3) if there is an intervening change in controlling law.” *Sch. Dist. No.*  
3 *1J v. Acands, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). “A motion for reconsideration is not  
4 an avenue to re-litigate the same issues and arguments upon which the court already has  
5 ruled.” *Brown v. Kinross Gold, U.S.A.*, 378 F.Supp.2d 1280, 1288 (D. Nev. 2005).

6 Plaintiff’s motion contains the following objections to the Court’s screening order:  
7 (1) Count I and III related to non-treatment of Plaintiff’s arm and shoulder should not have  
8 been dismissed; (2) Defendants Baugh, Clark, and Smith should not have been  
9 dismissed; (3) Allegations related to Plaintiff being transferred and Defendant Rexwinkle  
10 should not have been dismissed; (4) Count I related to medical diet should not have been  
11 dismissed; (5) Count II related to conditions of confinement and recreation yard time  
12 should not have been dismissed; (6) Count IV related to Freedom of Religion and Equal  
13 Protection should have been ruled on; (7) Count III related to Plaintiff’s foot condition  
14 should not have been dismissed; and (8) Count II alleging retaliation against Defendant  
15 Hightower should not have been dismissed. (ECF No. 23 at 2-10.) The Court discusses  
16 each in turn.

17 **A. Counts I and III — Treatment of Arm and Shoulder**

18 Plaintiff contends that his Count I and III claims related to non-treatment of his arm  
19 and shoulder should not have been dismissed because in his amended complaint he  
20 informed the Court that no treatment has been offered for his arm and shoulder (ECF No.  
21 11-1 at 14-19) and he submitted additional evidence (ECF No. 18), which includes all of  
22 Plaintiff’s grievances and doctors’ reports. (ECF No. 23 at 2-3.) The Court finds that in  
23 spite of Plaintiff’s contention that his arm and shoulder have not been treated, Plaintiff’s  
24 own motions show otherwise. In his amended complaint, Plaintiff details numerous visits  
25 with nurses and doctors, x-rays, and examinations of his arm and shoulder. (ECF No. 11-  
26 1 at 14-19.) Plaintiff also details a grievance response that states “Medical staff did  
27 conduct an assessment on the day in question with negative results of injury.” (*Id.* at 11-  
28 1 at 17.) A difference of opinion between the physician and the prisoner concerning the

1 appropriate course of treatment does not amount to deliberate indifference to serious  
2 medical needs. See *Toguchi v. Chung*, 391 F.3d 1051, 1058 (9th Cir. 2004). Accordingly,  
3 Plaintiff failed to state a colorable deliberate indifference claim related to his arm/shoulder.

4 **B. Dismissal of Defendants Baugh, Clark, and Smith**

5 Plaintiff asserts that Defendants Baugh, Clark, and Smith were deliberately  
6 indifferent to his serious medical needs by not informing doctors when Plaintiff was laying  
7 on the floor of his cell in pain. (ECF No. 23 at 3-4.) However, Plaintiff claims that  
8 Defendant Baugh, who is a nurse, would notify Defendants Clark and Smith, her  
9 supervisors, of Plaintiff's condition. (*Id.* at 4.) Further, in Plaintiff's amended complaint, he  
10 alleges that he was receiving pain medication for the pain and he did not allege further  
11 injury as a result of not immediately seeing a doctor. See *Hallett v. Morgan*, 296 F.3d 732,  
12 745-46 (9th Cir. 2002) (where a prisoner is alleging that delay of medical treatment  
13 evinces deliberate indifference, the prisoner must show that the delay led to further injury).  
14 Accordingly, Plaintiff failed to state a colorable deliberate indifference claim against  
15 Defendants Baugh, Clark, and Smith.

16 **C. Transfer Issue and Dismissal of Defendant Rexwinkle**

17 Plaintiff argues that his allegations related to being transferred by Rexwinkle to  
18 different prisons should not have been dismissed. (ECF No. 23 at 6, 8-9.) However,  
19 Plaintiff's claims concerning transfers were dismissed with prejudice in the original  
20 screening order (ECF No. 8 at 14) because prisoners have no liberty interest in avoiding  
21 being transferred to another prison. See *Olim v. Wakinekona*, 461 U.S. 238, 245 (1983).

22 **D. Count I — Medical Diet**

23 Plaintiff contends that his claim related to his medical diet should not have been  
24 dismissed. (ECF No. 23 at 6-7.) Plaintiff alleged in his amended complaint that Defendant  
25 Collins smashed his lunches, specifically his hard boiled eggs, making his lunches  
26 inedible. (ECF No. 11-1 at 9-10.) "The Eighth Amendment requires only that prisoners  
27 receive food that is adequate to maintain health; it need not be tasty or aesthetically  
28 pleasing." *LeMaire v. Maass*, 12 F.3d 1444, 1456 (9th Cir. 1993). It was unclear to the

1 Court if Plaintiff was alleging that because Defendant Collins smashed his lunches, he  
2 was left with an inedible lunch, or if Defendant Collins was actually withholding, and thus  
3 depriving Plaintiff of food. However, in the motion for reconsideration, Plaintiff clarifies  
4 that Defendant Collins would “refuse to pass [lunch] to Plaintiff for a week at a time...  
5 Plaintiff was left no lunches.” (ECF No. 23 at 6.) When considering conditions of  
6 confinement, the Court should consider the amount of time to which the prisoner was  
7 subjected to the condition. *See Hutto v. Finney*, 437 U.S. 678, 686-87 (1978). Upon  
8 reviewing the motion for reconsideration and the amended complaint again, liberally  
9 construed, Plaintiff states a colorable conditions of confinement claim based on having  
10 his lunches withheld for a week at a time by Defendant Collins. This claim shall proceed  
11 against Defendant Collins.

12 **E. Count II — Recreation Yard Time**

13 Plaintiff asserts that his claim related to recreation yard time should not have been  
14 dismissed. (ECF No. 23 at 7-8.) In his amended complaint, Plaintiff alleges that his access  
15 to yard time is limited to a “cage” with no toilet access. (ECF No. 11-1 at 22-24.)  
16 Conditions of confinement may, consistent with the Constitution, be restrictive and harsh.  
17 *Rhodes v. Chapman*, 452 U.S. 337, 347 (1981). However, “[p]rison officials have a duty  
18 to ensure that prisoners are provided adequate shelter, food, clothing, sanitation, medical  
19 care, and personal safety.” *Johnson v. Lewis*, 217 F.3d 726, 731 (9th Cir. 2000).  
20 “[S]ubjection of a prisoner to lack of sanitation that is severe or prolonged can constitute  
21 an infliction of pain within the meaning of the Eighth Amendment.” *Anderson v. Cnty. of*  
22 *Kern*, 45 F.3d 1310, 1314, *opinion amended on denial of reh’g*, 75 F.3d 448 (9th Cir.  
23 1995). With respect to exercise, the Ninth Circuit has recognized that “a temporary denial  
24 of outdoor exercise with no medical effects is not a substantial deprivation.” *May v.*  
25 *Baldwin*, 109 F.3d 557, 565 (9th Cir. 1997). Plaintiff failed to allege prolonged lack of  
26 sanitation or denial of exercise resulting in medical effects. Accordingly, Plaintiff failed to  
27 state a colorable conditions of confinement claim.

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1           **F.      Count IV — Classification Status**

2           Plaintiff alleges that his claims related to being classified as a gang member should  
3 have been addressed in the screening order. (ECF No. 23 at 9.) Plaintiff is attempting to  
4 state a due process claim based on his classification status. The Court dismisses this  
5 claim with prejudice, as amendment would be futile. *See Moody v. Daggett*, 429 U.S. 78,  
6 88 n.9 (1976) (holding that prisoners have no liberty interest in their classification status).

7           **G.      Count III — Foot Condition**

8           In his motion for reconsideration, Plaintiff claims that his allegations related to his  
9 foot condition were allowed to proceed in the original screening order, but not the  
10 screening order on the amended complaint. (ECF No. 23 at 9-10.) However, the Court  
11 did address Plaintiff's "drop foot" condition in the screening order on the amended  
12 complaint, and allowed Plaintiff to proceed with his deliberate indifference claim against  
13 Defendants Gedney, Marr, and Aranas. (See ECF No. 19 at 5-6.) Therefore, there is no  
14 basis for this objection.

15           **H.      Count II — Claims against Defendant Hightower**

16           Finally, Plaintiff objects to the dismissal of the retaliation and deliberate  
17 indifference claims against Defendant Hightower. (ECF No. 23 at 10.) Plaintiff does not  
18 present any further argument, but just asks that the Court read the amended complaint.  
19 (*Id.*) In this Court's first screening order, these claims were dismissed for failure to state  
20 a colorable claim, and Plaintiff was granted leave to amend. (See ECF No. 8 at 11-12.)  
21 Plaintiff failed to adequately amend these claims in his amended complaint, and therefore  
22 the Court again dismissed them. (See ECF No. 19 at 4-5.) The Court denies this objection.  
23 "A motion for reconsideration is not an avenue to re-litigate the same issues and  
24 arguments upon which the court already has ruled." *Kinross Gold, U.S.A.*, 378 F.Supp.2d  
25 at 1288. Further, a motion for reconsideration is properly denied where it presents no new  
26 arguments. *See Backlund v. Barnhart*, 778 F.2d 1386, 1388 (9th Cir. 1985).

27           Aside from Plaintiff's argument related to his medical diet, the Court finds that  
28 Plaintiff has not presented the Court with any newly discovered evidence, shown that the

1 Court committed clear error, that the initial decision was manifestly unjust, or that there  
2 has been an intervening change in controlling law. Accordingly, Plaintiff's motion for  
3 reconsideration is granted in part and denied in part.

#### 4 **IV. CONCLUSION**

5 For the foregoing reasons, it is ordered that a decision on the motion for preliminary  
6 injunction (ECF No. 21) is deferred.

7 It is further ordered that the Attorney General's Office must advise the Court within  
8 seven (7) days from the date of entry of this order whether it can accept service of process  
9 for the named Defendants and enter a limited appearance for the purpose of responding  
10 to the motion for preliminary injunction (ECF No. 21). In its notice, the Attorney General's  
11 Office will advise the Court and Plaintiff of: (a) the names of the Defendants for whom it  
12 accepts service; (b) the names of the Defendants for whom it does not accept service,  
13 and (c) the names of the Defendants for whom it is filing last-known-address information  
14 under seal. As to any of the named Defendants for whom the Attorney General's Office  
15 cannot accept service, the Office must file, under seal, but will not serve the inmate  
16 Plaintiff the last known addresses of those Defendants for whom it has such information.  
17 If the last known address of the Defendants is a post office box, the Attorney General's  
18 Office will attempt to obtain and provide the last known physical addresses.

19 It is further ordered that Defendants must file a response to Plaintiff's motion for  
20 preliminary injunction (ECF No. 21) within seven (7) days of the date of entry of this order.  
21 If Plaintiff chooses to file a reply, he must do so within ten (10) days after Defendants file  
22 a response.

23 It is further ordered that the Clerk of the Court electronically serve a copy of this  
24 order, a copy of Plaintiff's amended complaint (ECF No. 20), and a copy of Plaintiff's  
25 motion for preliminary injunction (ECF No. 21) on the Office of the Attorney General of  
26 the State of Nevada, attention Barbara Fell.

27 It is further ordered that Plaintiff's motion for reconsideration (ECF No. 23) is  
28 granted in part and denied in part.



1 It is further ordered that in light of the motion for reconsideration, and the screening  
2 order on the amended complaint, the following claims will proceed:

- 3 • Count I, alleging conditions of confinement claim related to medical diet, will  
4 proceed against Defendant Collins.
- 5 • Count I, alleging retaliation, will proceed against Defendant Collins.
- 6 • Count I, alleging excessive force, will proceed against Defendant Collins.
- 7 • Count II, alleging excessive force, will proceed against Defendant  
8 Hightower.
- 9 • Count III, alleging deliberate indifference related to a growth on Plaintiff's  
10 hand, will proceed against Defendants Gedney, Marr, and Aranas.
- 11 • Count III, alleging deliberate indifference related to treatment of Plaintiff's  
12 back, will proceed against Defendants Gedney, Marr, and Aranas.
- 13 • Count IV, alleging due process violations, will proceed against Defendants  
14 Rexwinkle, LeGrand, McDaniel, Keith, Baca, Deal, Walsh, Irvin, Foster, and  
15 Skulstad.

16 It is further ordered that the deadlines set forth in this Court's screening order on  
17 the amended complaint (ECF No. 20) will remain in full effect.

18 DATED THIS 28<sup>th</sup> day of September 2017.

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21 MIRANDA M. DU  
22 UNITED STATES DISTRICT JUDGE  
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